IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 250 of 2006

DATE OF DECISION: 4.10.2007

Commissioner of Income Tax, Jalandhar-II

…Appellant

Versus

Manoj Kumar Sekhri

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Bansal, Advocate,
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

The revenue has approached this Court by filing the instant appeal under Section 260-A of the Income Tax Act, 1961 (for brevity, 'the Act'), challenging order dated 5.9.2005 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal'), in ITA No. 601(ASR)/1999, in respect of assessment year 1993-94. It is claimed that following question of law would emerge from the order of the Tribunal for determination of this Court:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs. 1,13,033/- made by the Assessing Officer and upheld by the CIT (A), on account of in-genuine gift

received by the assessee disregarding the fact that genuineness and financial capacity of the donor was not proved and there was no occasion for making the gifts?"

Brief facts of the case are that in the year 1994 a search under Section 132 of the Act was conducted on the residential premises of the assessee and during the course of assessment proceedings in respect of assessment year 1994-95 it was observed that the assessee had made certain investments in the year under consideration. Consequently, after recording reasons, notice under Section 148 of the Act was issued to the assessee and in response thereto the assessee filed his return on 25.4.1997 for the assessment year 1993-1994 declaring his income as Rs. 1,27,610/-, which was processed under Section 143(1)(a) of the Act. During the course of assessment proceedings, the assessee was required to explain source of credit of 4000 US$ in his Saving Bank Account No. 11912 with State Bank of India, Nurmahal, which were allegedly received as gift from Shri Mohinder Handa. The assessee filed confirmation of gift from Shri Mohinder Handa. Thereafter, it was observed by the department that Shri Mohinder Handa had been making gift year after year to the members of the group and in the assessment year 1996-97 the total gifts received by the group were in excess of 50000 US$. The assessee was required to file detail of relationship and occasion for sending the gift, vide order sheet entry dated 24.8.1998. However, no evidence is stated to have been filed by the assessee. With regard to evidence of paying capacity of the donor, the assessee filed a copy of certificate from M/s General Motors, Canada, certifying that the donor had been working with the said company

since 1976 and his yearly salary as in January 1997 was 57,524 Canadian dollars. On 13.11.1998/7.12.1998, the Assessing Officer passed an order treating the amount as a bogus gift re-routed as a foreign remittance and added Rs. 1,13,033/- to the income of the assessee and total taxable income of the assessee has been assessed at Rs. 2,45,643/-. Consequently, penalty proceedings under Section 271 (1)(c) of the Act were also initiated (P-1).

The assessee then filed an appeal before the CIT (Appeals), who upheld the addition of Rs. 1,13,033/-, vide order dated 15.10.1999 (P-2).

Against the order of the CIT (A), the assessee preferred further appeal before the Tribunal. The Tribunal accepted the gift as genuine and allowed the appeal of the assessee, vide order dated 5.9.2005. A bare perusal of the order passed by the Tribunal shows that the gift amount claimed by the assessee came to him through banking channel. The amount was credited to the assessee by the donor Shri Mohinder Handa, who is his real brother-in-law and not a stranger. It is also an admitted fact that he was residing in foreign country for the last 20 years and used to send gift to the assessee on earlier occasions also. He has the capacity to make the gift. The Tribunal has also referred to the earlier order dated 18.7.2003, passed in I.T.A. Nos. 553 and 682 (ASR)/1997, in respect of assessment year 1994-95, accepting the gift made to the assessee by the same donor. Following the rule of consistency as laid down by Hon'ble the Supreme Court in the case of **Berger Paints India Ltd. v. CIT, (2004) 266 ITR 99**, the Tribunal found the gifts to be genuine and set

aside the orders of the CIT (A) as well as Assessing Officer deleting the additions.

After hearing learned counsel, we are of the considered view that no question of law, much less a substantive question of law warranting admission of the appeal would arise. There are findings of fact recorded by the Tribunal by citing the earlier detailed order where the gifts made by the donor has been accepted as genuine. The income has been received by the assessee through banking channel and identity of the donor is also established, who is real brother-in-law of the assessee. The gift could not be considered bogus. The principle of consistency laid down in Berger Paints (supra) has been rightly applied. Therefore, we do not find any ground to interfere in the view taken by the Tribunal. The appeal is wholly without merit. Dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 4, 2007
Pkapoor

FIT FOR INDEXING